



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Hellenic Technodomiki, S.A.

File: B-265931

Date: January 18, 1996

James Marketos, Esq., Lane and Mittendorf LLP, for the protester.
Cynthia Guill, Esq., Department of the Navy, for the agency.
Charles W. Morrow, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. The procuring agency reasonably determined that a joint venture satisfied the solicitation's definitive responsibility criterion that a contractor possess a category H license under Greek Law, where one venturer under the terms of the joint venture agreement was fully responsible for the work and possessed the required category H license.
2. Bid allegedly containing some below-cost line item prices is not unbalanced, where the bid is not alleged to contain overstated prices for other line items.

DECISION

Hellenic Technodomiki, S.A. protests the award of a contract to Themeliodomi, S.A. and Contracting, Ltd., a joint venture, under invitation for bids (IFB) No. N62470-94-B-4044, issued by the Naval Facilities Engineering Command for construction work in Crete, Greece. Hellenic contends that the awardee fails to meet a definitive responsibility criterion, and that its low bid price was unreasonable and unbalanced.

We deny the protest.

The IFB, which sought a contractor to perform various construction projects, contained the following qualification requirement:

"BIDDER'S QUALIFICATIONS: Before a bid is considered for award, the low responsive bidder will be requested to submit . . . proof that the firm is of the overall . . . category classification "H" licensed under Greek laws and regulations (Greek Ministry of Environment, Planning and Public works Presidential Decree 368 dated 30 November 1994) to undertake the construction of this project. If the bidder is unable to

provide this information it may be considered nonresponsible and will not be further considered for award."

At bid opening, the Navy received 13 bids. The low bid was submitted by Themeliodomi/Contracting, while the next low, responsive bid was submitted by Hellenic. With respect to satisfying the qualification requirement, Themeliodomi possessed an H category classification license and its joint venturer, Contracting, possessed a Z category license.¹ Their joint venture agreement stated that each party would provide the necessary specialized personnel and equipment to perform the project, would equally share in any profit or damage, and Themeliodomi, by virtue of its H class license, would have full responsibility for the project. Based upon this information, the Navy determined that Themeliodomi/Contracting satisfied the bidder's qualifications requirement.

Hellenic protests that the qualification requirement is a definitive responsibility criterion which the joint venture does not satisfy because only Themeliodomi possesses an overall H class license. Specifically, Hellenic asserts that Greek presidential decree 609, which is referenced by presidential decree 368, provides the rules for bidding on Greek public works projects and states as follows:²

"Joint ventures of firms of the same category are accepted in the bidding unless otherwise provided in the call for tenders. The joint venturers must all belong to the class which is called out in the bidding. If so provided in the call for tenders, one of the joint venturers can belong to the class called out, and the others may belong to one or two of the immediately lower classes. In such latter case, the firm or firms must hold at least 75 percent of the shares."

¹Hellenic asserts that Contracting actually holds an overall license below category Z. However, given our decision that the agency could reasonably determine that the joint venture met the overall H licensing requirement based upon Themeliodomi's H class license and agreement to be fully responsible for the project, this argument is irrelevant.

²While the Navy and the protester have disputed the literal translation of presidential decree 609 from Greek into English, the protester agrees that the Navy's translation reflects the substance of the decree. In any event, we have used the protester's translation.

Hellenic argues that, under decree 609, the Themeliodomi/Contracting joint venture cannot be viewed as holding an H class license, because only Themeliodomi possesses an class H license and the venturers have equal ownership interest in the joint venture.

Definitive responsibility criteria are specific and objective standards established by an agency as a precondition to award that are designed to measure a prospective contractor's ability to perform the contract. See Federal Acquisition Regulation § 9.104.2; T. Warehouse Corp., B-248951, Oct. 9, 1992, 92-2 CPD ¶ 235. Here, the parties agree that the bidder qualification requirement is a definitive responsibility criterion.

We find that the Navy reasonably concluded that the awardee satisfied this requirement. An agency properly can impute the resources, capabilities, and facilities of one venturer of a joint venture in order to determine that a joint venture satisfies a definitive responsibility criterion, where imputation is compatible with the purpose for the requirement. See Loyola College and NonPublic Educ. Servs., Inc., a Joint Venture; Johnson & Wales College, B-205994 et al., May 16, 1983, 83-1 CPD ¶ 507. Here, the Navy states that the qualification requirement was necessary because of the number of construction contractors the Navy has been required to default due to insufficient resources and expertise to complete projects in Greece; the H class licensing requirement is intended to ensure that the agency obtains a contractor with sufficient labor, expertise, equipment, management, and resources for the project. The Navy determined that this purpose was satisfied here because Themeliodomi holds a class H license and is, by virtue of the joint venture agreement, fully responsible for the project. We find no basis to object to this determination.

The Navy also reasonably determined that presidential decree 609, cited by the protester as governing the license classification of joint ventures, was not applicable to this procurement. This decree expressly applies to Greek public works and projects; it does not apply to procurements of the United States. While the IFB incorporated the general business licensing requirements of decree 368 and this decree references decree 609, the language of decree 609 makes it clear that this decree applies only to work being performed on Greek public works. In this regard, the protester has identified no other laws or regulations that would require the agency to restrict eligible contractors to those that satisfy the requirement applicable to firms performing work for the Greek government.

Finally, Hellenic's challenge to the awardee's bid as unbalanced and unreasonably low on certain line items provides no basis to object to the award, where, as here, there is no evidence or assertion that the bid was overstated under other line items. Before a bid can be rejected as unbalanced, it must be found to be both mathematically and materially unbalanced, and a bid is only mathematically

unbalanced if it contains both understated and overstated costs. See Advanced Modular Space, Inc., B-265860, Oct. 6, 1995, 95-2 CPD ¶ 168. Furthermore, the submission of a below-cost bid is not illegal, and the mere fact that a bid includes understated prices does not justify rejection of the bid. Nissho Iwai Am. Corp.; Patterson Pump Co., B-254870; B-254870.2, Jan. 24, 1994, 94-1 CPD ¶ 34.

The protest is denied.

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